

May 6, 2011

Chairman Phillip Isenberg
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA
95814

Re: Third Staff Draft Delta Plan

Dear Chairman Isenberg, Council, and staff:

Thank you for the opportunity to comment on the third draft of the Delta Plan. Our organizations are in the process of preparing or implementing landscape level multi-species Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) in four of the five Delta counties¹. A fifth plan is underway in Sacramento County. The East Contra Costa County HCP/NCCP and the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan are approved and implementation has begun. The remaining three plans are on schedule for adoption in 2012. Together, these plans will provide for the conservation of ninety-nine special status and at-risk species that depend on the Delta and surrounding habitats. Moreover, these ambitious plans can provide an enormous contribution to the long-term sustainability of the Delta region by preserving and restoring important aquatic and terrestrial habitats in and around the Delta.

We are concerned that the Delta Plan could present an obstacle to the success of these efforts if it imposes new conditions or requirements for their implementation or approval. These conservation plans represent the combined efforts of local, state and federal government agencies, are carried out in an open and transparent way, and are subject to extensive environmental review. We think that additional procedural or substantive requirements are unnecessary and could be counterproductive—redundant or conflicting requirements could make it more difficult for these conservation planning efforts to succeed and to realize their contributions to the long-term sustainability of the Delta.

HCP/NCCPs are authorized and permitted pursuant to the Endangered Species Act, the California Endangered Species Act, and the Natural Communities Conservation Planning Act. These laws contain requirements to protect and conserve species to the maximum extent, consistent with constitutional requirements for rough proportionality, offering the opportunity to achieve the maximum conservation allowed by law. HCP/NCCPs balance the needs and concerns of federal and state regulators, local governments, and affected stakeholders by resolving complex environmental conflicts in ways that create opportunities that are otherwise difficult or even impossible to achieve. This balance is memorialized in binding, long-term regulatory agreements that ensure plan implementation over the term of each plan, which is typically between 30 and 50 years.

¹ Contra Costa County, San Joaquin County, Solano County, and Yolo County

HCP/NCCP's direct urban development and new infrastructure to less environmentally sensitive lands and result in more conservation than would be provided by a conventional, project-by-project application of state and federal environmental laws. The regulatory assurances conferred on the local governments that are willing to assume the responsibility to implement these HCP/NCCPs are an essential inducement to both initiate and complete each conservation plan. New conditions or requirements imposed under the Delta Plan could weaken or undermine these regulatory assurances and reduce the benefit of an HCP/NCCP to local governments and other plan participants.

Substantial public investment in the form of state and federal grant funding, local government investment, and human capital has gone into the planning and implementation of the five Delta County HCP/NCCPs. The collective value of this investment to date exceeds \$25,000,000, and the expected contribution to conservation over the life of these five plans will be in the range of billions of dollars. This investment will substantially advance the goals of the Delta Plan in ways that might not otherwise be possible.

The five Delta County HCP/NCCPs have been developed on a foundation that mirrors the core principles articulated in the Third Staff Draft Delta Plan. These include the need for a governance structure that is transparent and accountable; guaranteed financing to undertake the tasks committed to; a strong science information base that incorporates adaptive management and monitoring; and commitment to the preservation of unique natural, agricultural, and cultural resources. Because the HCP/NCCPs already reflect the core principles of the Delta Plan, and because the Delta Plan could complicate or interfere with their development and implementation, we strongly urge you to make it clear in future drafts of the Plan that these HCP/NCCPs are exempt from Delta Plan requirements.

The third draft of the Delta Plan notes briefly on page 37 that regulatory actions taken by state agencies, such as the issuance of take permits under the California Endangered Species Act by the Department of Fish and Game, are statutorily exempt from the jurisdiction of the Delta Plan. Due to the significance of this issue for HCPs/NCCPs and HCPs/2081s being developed in the five Delta counties, a more thorough discussion of this issue is warranted and should be included in the fourth draft of the Delta Plan. We think the statutory exemption in the California Water Code applies to all permits issued under the California Endangered Species Act and the Natural Communities Conservation Act and, by extension, to the adoption of an HCP/NCCP by a local jurisdiction. Activities covered under such HCP/NCCPs should also be exempt from the jurisdiction of the Delta Plan, at least to the extent that it pertains to the species and habitats covered in the HCP/NCCPs.

Delta Stewardship Council
May 6, 2011
Page 3 of 3

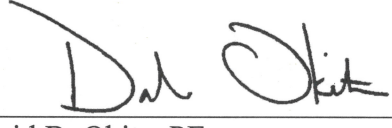
This issue is vitally important to the local Delta agencies engaged in these conservation planning efforts. We ask that the fourth draft of the Delta Plan provide an expanded Delta discussion of the exemption of HCPs/NCCPs and HCPs/2081s to clarify that the Delta Plan is intended to complement the Delta County HCP/NCCPs, not to govern or supplant them.

We look forward to working with the Council on these issues and welcome additional discussion and dialogue that further clarifies the role of the Delta County HCP/NCCPs in the Delta Plan process and other issues of common concern.

EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY

By 
John Kopchik
Executive Director

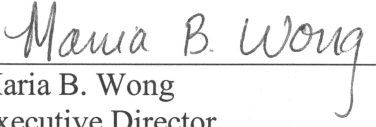
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